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The Construction of Law Institutional the Management of Zakat through Functions of Islamic Banking in Perspective Maqasid Al-Sharia

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Abstract

The construction of law Institutional the management of zakat through the function of Islamic banking in Indonesia has not realized the justice of economy for those who deserve to receive zakat and for social welfare. It is affected by the forms of law of Islamic banking as a company that has been prioritizing profit and business orientation alone.

In order to realize the concept of zakat management institutions justly, it is time for Zakat management to ensure the maintenance of religious alms-either *muzakki* (the one who is obliged to pay the alms (zakat) and *mustahiq* (the one who is deserved to receive it)-, to ensure the safety of the lives of the *mustahiq* and to ensure the safety of the property of *muzakki* to *mustahiq*. Zakat management institutions that can guarantee the implementation of the principles of *maqasid al-sharia* are through the paradigm shift and the change in the concept of the function of Islamic banking radically.

The transformation of Islamic banking paradigm as intermediary institution in collecting, distributing and utilizing social religious funds such as zakat is based on the two concepts, namely the concept of fundamental change in the orientation of the business of the profit-based enterprise into social enterprise or called social enterprise theory, and the concept of the change of intermediary business profits funds into a social fund intermediary religious alms called ta'awun theory. The theory of social enterprise is a legal form of organization or company that only running intermediation principle and function of social funds that is oriented toward social benefits, not profit oriented business. The theory of ta'awun is the principal function of social enterprise in running the collection, distribution and utilization of social fund religious (zakat etc.) of *muzakki* to *mustahiq* based on compansation (donation) of aqad not based on loan.

Keywords: Institutional management of zakat, Islamic banking function, *Maqasid al-Shariah*

1. Introduction

Based on the research results of BAZNAS, the potential of zakat throughout Indonesia reaches at Rp. 217 billion every year. That potential has a great role in supporting the development of national economy. However, the alms (zakat) still becomes an ideal normative framework concept. In reality,

the facts have shown that the countries with moslem majority citizen including Indonesia are still classified as a developing country with the rate of poverty which is remain high.¹

In 2014, the economic condition of the people of Indonesia is still below the poverty line. The number of poor people in Indonesia is still quite high, namely 29.9 million of the total population. The open unemployment rate was around 15.54 million or 6.56 % of the total population. At the same time, the Indonesian people are still faced with a variety of other social-economic problems such as ignorance and backwardness, the unhealthy physical condition of the people, low income, heavy family burden, and not having adequate housing.²

Bank as one of the economic institutions which has the function to collect and distribute public funds is supposed to be able to carry out the eradication of social economic problem program which is still sweeping the nation of Indonesia. The function of the Bank as a collector and distributor of public funds aimed at supporting the implementation of national development in order to improve justice, solidarity and equality welfare. The main function of the bank is known as intermediary function. Banks function as an intermediary institution is as in Article 1, paragraph (2) of the Regulation of the Republic of Indonesia Number 10 of 1998 on the Amendment Regulation of the Republic of Indonesia Number 7 of 1992 can be grouped into three.³ First, the bank is as an institution that raises public funds or credit receiver. Second, the bank is as an institution of public funds in the form of credit institution or a lending institution. Third, the bank is as an institution that launched commercial transactions and payment of money. It is based on those functions, which is meant by the function of intermediation by the bank is the bank's activities to collect and distribute funds to the weak community (community with weak economy), small and medium enterprises in order to improve their lives. Bank intermediation function can also be interpreted as an activity of transferring funds from the customers who have excess funds (savers/depositors) as savers to customers who require funds (of borrowers) as a borrower.⁴

Based on the definition above, the function of bank as intermediary is the function of bank as intermediary to accept even to have the authority to collect, transfer or distribute the funds.⁵ The existence of the banking including Islamic banking is supposed to be the intermediary institutions in realizing that noble objectives, however, it turn out to have not been implemented to the fullest, because in 2014 nearly 27 million of the 54 million micro enterprises SMEs have not got the credit facilities from the banks.

Therefore, as a business-oriented enterprise, it is the time for Islamic banking to rearrange itself in performing that noble task. The paradigm of the role and function of Islamic banking as an intermediary institution must undergo a radical change from the function of profit oriented to social oriented.

The role and function of Islamic banking based on social is already provided in the Article 4 paragraph (2) of the Regulation of the Republic of Indonesia Number 21 Year 2011 concerning Islamic Banking which states:

(2). Islamic Banking and UUS can perform a social function in the form of *bait al-mal* institution, which receives funds from zakat, charity, grants, or other social funds and distribute them to the organization of zakat.

¹ A.A. Miftah, "Updates Alms For Poverty Alleviation in Indonesia," *Jurnal Innovatio*, Volume VII, No. 14, Juli-Desember 2008, p. 423.

² Rifki Ismal (Director assistant of the Islamic Banking Departement of the Bank of Indonesia), Paper presented at the National Seminar, Perbankan Syariah: Pilihan Tepat Dan Solusi Bagi Masalah Ekonomi, STAIN Palangka Raya, Palangkaraya, 9 December 2013, p. 4.

³ I Gde Mastra, *Setting Function Bank As Intermediation Institutions to Improve Public Welfare Through the Small and Medium Enterprise Credit*, Dissertation, (Malang: Universitas Brawijaya, 2012), p. 29.

⁴ Triandaru Sigit dan Totok B., *Bank dan Lembaga Keuangan Lainnya*, (Jakarta: Salemba Empat, 2008), p. 12.

⁵ Arthesa Ade dan Edia Handiman, *Bank dan Lembaga Keuangan Bukan Bank*, (Jakarta: PT. Indeks, 2006), p. 11.

The expansion of the social function of the institution of Islamic banking as *bait al-mal*,⁶ is actually a reflection of the trust and alignments of Islamic financial institutions and the government that aim to ensure the flow of wealth from the rich (*muzakki*)⁷ to a group that is entitled to receive (*mustahiq*)⁸ and for other public benefit.⁹ However, the role and social functions of Islamic banking as Article 4 paragraph (2) above is not enough if it positions Islamic banking as an intermediary institution for profit-oriented and purely business.

Paradigm and the concept of Islamic banking which has specificity and differences with the banks in general are supposed to get back to the real function that is not only focuses in carrying out intermediation of funds based on profit and business oriented, but also should carry out the functions of the intermediary to the potential religious and social fund, that is zakat.

It is time for zakat as a religious institution in the field of economy to be empowered through the role of Islamic banking which is growing rapidly these days. Operational characteristics of Islamic banking can be useful in managing zakat system that requires accountability and good administration and neat.

Until 2014, the national Islamic banking shows a fairly rapid growth with the number of Islamic Banks (BUS) that reached 11 units,¹⁰ and the number of Sharia (UUS) that reached 24 units.¹¹ Apart from BUS and UUS, Indonesia has had 160 SRB with more than 2900 offices across Indonesia, as well as Sharia Services (office channeling) as many as 31 units.¹²

⁶ According to the *Bait al-Mal* language is a treasure house. In the context of governance, Baitul Mal is identical to the definition of the state treasury. According to the Article 15 paragraph (1) of Law No. 23 Year 2011 about Zakat, *Bait al-Mal* that is another mention of the term BAZNAS in Aceh Special Region. Meanwhile, according to Article 171 paragraph e Compilation of Islamic Law, Bait al-Mal is a religious treasure hall.

⁷ According to the language, *muzakki* are the ones who have the ability to pay the alms (zakat). According to Article 1 paragraph 5 of Law No. 23 Year 2011 about Zakat, *muzakki* is a muslim or a business entity that is obliged to pay the alms (zakat).

⁸ In accordance with Article 1 paragraph 6 of Law No. 23 Year 2011 about Zakat, *mustahiq* is a person who is entitled to receive zakat. *Mustahiq* criteria as described in the Qur'an Al-Tawbah verse 60 which means: "Verily the alms - charity, just for poor people, the zakat collectors, the Muslim convert who persuaded him, for (freeing) slaves, those in debt, for those who struggle in the path of Allah and the people who are on their way, as something that required provision of Allah, and Allah is Knower, Wise." Shall mean the poor are very miserable life, do not have the wealth and power to meet their livelihood. Poor are those who have not adequate livelihoods and in a state of deficiency. *Amil* is a person who was given the task to collect and distribute Zakat. Muslim convert is an infidel who has just converted to Islam and hopes that the new convert to Islam whose faith is still weak. Freeing the slave is including to release the captive Muslims by infidels. *Gharim* are the ones who have the debt not for the evil and cannot afford it. *Fi sabilillah* is for the purpose of defending Islamic community which is including the need for public interest such as building the schools, hospitals and others. *Ibnu Sabil* is a person who is on a trip which is not for the purpose of evil, who suffered tribulations along the way. Al-Quran al-Karim al-Ila Tarjamatu Ma'anihi Lughah al-Indunisiyyah, (Madinah al-Munawarah, Saudi Arabia: Mujamma' al-Malik Fahd al-Thiba'at li al-Mushaf al-Sharif, 1422 H), p. 288.

⁹ Piece QS. Al-Hashr verse 7 states: "... that the treasure was not circulated among the wealthy among you ...". Al-Qur'an al-Karim, p. 916.

¹⁰ Islamic Banks (BUS) in Indonesia is PT Bank Syariah Muamalat Indonesia, PT Bank Syariah Mandiri, PT Bank BNI Syariah, PT Bank Syariah BRI, PT Bank Syariah Mega Indonesia, PT Bank Jabar Banten and PT Bank Panin Syariah, PT Bank Syariah Bukopin, PT Bank Victoria Syariah, PT Bank Syariah, PT Maybank Syariah Indonesia. <http://www.bi.go.id>. Accessed on 2 February 2014.

¹¹ Islamic Business Unit (UUS) in Indonesia is PT Bank Danamon, PT Bank Permata, PT. Bank Internasional Indonesia (BII), PT. CIMB Niaga, HSBC, Ltd., PT Bank DKI, BPD DIY, BPD Jawa Tengah (Central Java), BPD Jawa Timur (East Java), Banda Aceh BPD, BPD North Sumatra (North Sumatra), BPD Sumatra Barat (West Sumatra), BPD Riau, BPD South Sumatra (South Sumatra), BPD South Kalimantan (South Kalimantan), BPD West Kalimantan (Kalbar), BPD East Kalimantan (Kaltim), BPD South Sulawesi (Sulawesi), BPD West Nusa Tenggara (NTB), PT BTN, PT Bank Savings National (the Bank), PT OCBC NISP, PT Bank Sinarmas, BPD Jambi. <http://www.bi.go.id>. Accessed on 2 February 2014.

¹² Sharia services (office channeling) is at UUS Bank Danamon Indonesia, UUS Bank Permata, UUS BII, UUS State Savings Bank, CIMB Niaga UUS, UUSs the Bank, HSBC UUS, UUS BPD DKI, BPD UUSs Banda Aceh, Sumatra UUSs BPD, BPD UUS Riau, Sumatra UUS BPD, BPD UUSs South Sumatra, Central Java UUSs BPD, BPD DIY UUS, UUS Java BPD, BPD UUSs South Kalimantan, West Kalimantan UUSs BPD, BPD Kaltim Sharia Division, UUS BPD South Sulawesi, West Nusa Tenggara UUSs BPD, UUS OCBC NISP, Bank UUS Sinarmas, UUS BNI, West Java and

The rapid development of Islamic banking is also seen by the increasing number of Islamic banking office network. When in April 2012 the number of offices reached 1,457 units, in the same month in 2013, that number increased to 1,858 units. The expansion of the branch network has also been able to increase the Islamic bank users. This can be seen from the increasing of the total number of loan accounts of 3.31 million accounts. The number of accounts recorded in the previous year was 10.83 million accounts in 2013 have increased to 14.14 million accounts. According to Islamic banking statistics of BI, by April 2013 the total assets of Islamic banking have exceeded to USD. 207.800 trillion. Compared to the previous one-year period, the asset of Islamic banking has increased to of 44%. The figure of the finance has reached to Rp. 163.407 trillion. Third-party funds reached at Rp. 158.519 trillion. Islamic banking intermediation function is increasing, which is seen by FDR in April 2013 reached 103.08%. This figure increased from the previous year to reach 95.39%, bringing the total of national Islamic banking market share reached at 4.86%.

According Rifki Ismal,¹³ annual growth of Islamic banking Indonesia experienced significant growth. Annual growth of Islamic banking in August of 2013 is high enough at 38% from 2012 which was still at 34%. The number of Islamic banking contributing to the economy (real sector) is seen from the financing ratio to total deposits ratio (FDR) is 101% over the last 12 years (2001-July 2013) with bad credit (NPF) under 3% in the last two years, NPF in May, June, July and August 2013 only 2.92%, 2.64%, 2.75% and 2.8%. Moreover, the total assets per August 2013 reached at Rp. 227 trillion, total financing is Rp. 177 billion and a total deposit is Rp. 171 trillion. Untill August 2013, the Islamic banking has had 4.9% market share and is expected by the end of 2013 to reach more than 5%.

The growth of Islamic banking is certainly become a positive energy in realizing the objectives and functions of the establishment of Islamic banking through zakat fund management. In order to change the paradigm and the concept of Islamic banking as zakat management institutions, researchers used the theoretical framework of shariah enterprise and *maqasid al-shariah*. The method used to approach the problem of the concept and the function of Islamic banking, researchers used a philosophical approach of Islamic legal purposes (*maqasid al-shariah*), conceptual approach and regulatory approach, especially in regard with the principle of intermediation.

2. The Concept of Institution of the Zakat Management through the Functions of Islamic Banking in Perspective of Maqasid Al-Shariah

2.1 Theoretical Antinomy of the Conservative Zakat Management of Zakat Versus Innovative Zakat Management

It should be recognized that the ineffectiveness of the implementation of zakat management system in Indonesia is caused by various obstacles. One of these obstacles arises in the theoretical realm. A barrier of the management of zakat in Indonesia is caused by the static condition of the paradigm and conceptual framework relating to the understanding of the fiqh of zakat.¹⁴ Theoretically, the paradigm and Fiqh (Islamic Jurisprudence) concept on Zakat are complicated concepts zakat jurisprudence. According to researchers, paradigmatic problem of substance and implementation of the alms (zakat) is focused in four elements, namely the concept of a group or a person who gives alms (*muzakki*), or a

Banten UUS BPD, UUS IDX, UUS Bukopin, UUS IFI, UUS BRI, UUS Lippo, UUS BPD Jambi. <http://www.bi.go.id>. Accessed on 2 February 2014. See Rifki Ismal (Assistant Director of the Department of Islamic Banking-Bank Indonesia), National Seminar on Islamic Banking Papers: The Right Choice For Economic Problems And Solutions, STAIN Palangka Raya, Palangka Raya, December 9, 2013, p. 5-14.

¹³ Rifki Ismal (Asisten direktur Departemen Perbankan Syariah-Bank Indonesia), Makalah Seminar nasional Perbankan Syariah: Pilihan Tepat Dan Solusi Bagi Masalah Ekonomi, STAIN Palangka Raya, Palangkaraya, 9 Desember 2013, p. 5-14.

¹⁴ Zakat Directorate Directorate General of Islamic Community Guidance, Guidance Zakat, (Jakarta: Ministry of Religious Affairs, 2009), p. 21.

group of people who receive zakat (*mustahiq*), or a group of people who manage zakat (*amil*) and the property of zakat.

The issue of the concept of a group or person, who gives alms (*muzakki*) in the conservative perspective of understanding the *muzakki*, is the subject of law as individual. *Muzakki* concept has not touched the concept of corporations and other legal entities that are currently growing rapidly. The paradigm shift of the terminology of *muzakki* which is increasingly developed finds a new concept that *muzakki* can also be applied to corporate or legal entities that are always productive in getting the profit. The next problem is the type of work and productivity of the *muzakki*. Fundamental developments in the world of work produce professional workers in various fields. That basic framework paradigm produces the changing of paradigm of the *muzakki* from only the one who can afford to pay the alms (zakat) to the qualification in the profession. This interpretation is backed up by the development of the kinds of work in religious texts which in the business can produce far more property that ultimately resulted in the eligible asset for zakat issued. This shift of paradigm has given the birth to the concept of the so called “zakat of profession”.

The next problem is related to zakat terminology. The management of zakat either tithe or zakat of the property (*mal*) has attracted the attention of researchers. Zakat property that can be converted into cash in the utilization of zakat requires accountable administrative management. This requires professional zakat collectors in administration, accounting and recording zakat. *Amil Zakat* (Zakat collector) is crucial point in operational act of the alms (zakat). *Amil Zakat* or zakat collector is a person or a committee or organization that manages the alms.¹⁵ As a manager, zakat collector must meet the requirements. *Amil zakat* in the Islamic religious jurisprudence perspective should meet some criteria such as being Muslims, honest, trustworthy, fair, and competent in the field of the alms. Referring to Article 11 of Regulation No. 23 of 2011 on Zakat Management which stated that the requirements for becoming a member of zakat (BAZNAS) is to be a citizen of Indonesia, adheres the Islamic religion, devoted to God, has good character or moral, at least 40 years old, physically and mentally healthy, not a member of a political party, has the competence in zakat management, and never convicted to a criminal act, punishable with at least 5 years.

Based on these requirements, to be the *amil zakat* (zakat collector) is not an easy task. *Amil zakat* as one of the management systems is capable of carrying out the operation required in accord with shariah, the mandate applies to property of the received zakat and in its distribution, he is able to put the target, so the property of zakat can be useful, to be fair in distributing the Zakat property, skilled in coordinating an integrated manner, and that *amil zakat* (zakat collector) is required to be accountable in carrying out any zakat administration.

The representation of the professionalism accountability of *Amil zakat* (zakat collector) is reflected through the two paradigms are the obligation almsgiving as Islam pillars and of Islamic banking functions. Institutional paradigm of zakat through Islamic banking function is the management of innovative alms that is consistent with the purposes of the law of zakat management is the institution that can ensure the circulation of zakat and to realize the justice of zakat economy.

Embodiment of legal purposes in justice can be measured through five (5) certainty in the law of integrated zakat management institutions namely the certainty of the rule of zakat institution through Islamic banking, the certainty of institution, the certainty of mechanisms, the certainty of time certainty, and certainty of the prediction. It is through those five certainties that the institution of zakat management can be supervised institutions, and measurable in the management of zakat.

Based on the five (5) certainty principles, then zakat which is managed traditionally by society as well as the government, in the idea of law and juridical order has not been able to effectively empower the property of zakat. The implementation of zakat which is managed traditionally such as giving to the *amil zakat* (zakat collector) institutions and local religious leaders such as foundations, religious scholars, preachers, and others will lead to social unrest. The zakat collected is worried to be not administratively well managed. Therefore, the implementation of conservative zakat still not able

¹⁵ *Ibid*, p 32.

to optimize the utilization of zakat as the genuine meaning of Zakat is to free people from poverty, to develop and to enrich materially with the hope that it can change the position of *mustahiq* to be *muzakki*.¹⁶

2.2 Antinomy of the Concept of the Utilization of Consumptive Zakat Versus Productive (Asset)

The dynamics of the implementation of zakat in Indonesia has developed, from the accumulation of conventional activities in the mosques developed into an innovative accumulation through Zakat Organization business at the national level. However, it does not mean to be clean from the hindrance and obstacles. One of the hurdles is the emergence of differences of opinion about the issue and the use of zakat funds transactions.

Theoretically, the utilization of zakat is divided into two concepts. First is consumptive utilization of assets and productive utilization of zakat. Differences of opinion emerged in line with the continued development of innovation of the management of zakat, not only in terms of accumulation but also in the distribution. Currently, the pros and cons of zakat management occurs at the step of number of *amil* zakat (zakat collector) institutions which purchase or hold a variety of assets, facilities, and services for the *mustahiq*. Many of them set up schools and health clinics for free. They also set up various training centers (BLK) using zakat fund. Pros and cons are getting warmer when not all Muslim clerics and scholars have the same opinion about it. Their dissent was based on concern that zakat funds can be utilized appropriately and of great benefit to the recipient of the alms (*mustahiq*).

According to Muslim scholars Adiwarman Anwar Karim,¹⁷ Zakat is beneficial for the construction of various facilities and develop services. Therefore, zakat collector institution should go back to Qur'an Al-Tawbah verse 60, namely:

Verily alms-charity is only for poor people, poor people, board of zakat collector, the Muslim convert whose hearts have been persuaded, for freeing slaves, those in debt to invest in the way of Allah and those who are on the way, as something that required God's provision, and Allah is Knower, Wise.¹⁸

Eight categories of zakat recipients in the above verse are divided into two major categories. First, four of zakat recipients should receive zakat funds directly to meet daily needs, including such needy and poor. Second, the four recipients of zakat fund allocation could be used for the construction of facilities. The Qur'an Al-Tawbah verse 60 explains the first four groups using a *li al-fuqara'* word, which is intended for direct utilization of zakat. Meanwhile, four other groups using the "*fii*" are intended for use indirectly. Based on the opinion of the distribution of alms to the first four classes must be distributed in person who can quickly be utilized primarily for consumption. Zakat should not be distributed to them in the form of revolving loans, buildings, or other facilities. The shape can be either immediate basic needs such as tithes or money which is distinguished as zakat for them to meet daily needs.¹⁹

Other response about the use of zakat is delivered by Didin Hafidhuddin. According to Didin, the use of the word *li al-fuqara'* in the use of zakat is as "*li*" in Qur'an al-Taubah verse 60 means to the ownership only, but the meaning of "*li*" here has the meaning of benefit (to benefit). If "*li*" is simply interpreted as ownership, then the alms given to the poor to be used at will, and it gives the impression of less educated. Didin stated that zakat funds that have been given to the poor have become absolutely their right. Therefore it's up to them what to do.²⁰ However, in principle, the utilization of zakat must be aligned with the goals for the benefit and interests of the *mustahiq*.

Furthermore, the empowerment of zakat according to Didin needs more modern innovation. Didin not completely agree with the opinion that zakat funds should not be used to purchase the asset because it will inhibit the innovation of zakat management in Indonesia. The utilization of zakat in the

¹⁶ *Ibid.*, p. 21.

¹⁷ Noor Aflah, *Architecture Zakat Indonesia* (Jakarta: Indonesia-University Press, 2009), p.133

¹⁸ al Qur'an al Karim, p.288

¹⁹ Nor Aflah, Op.Cit, p.138

²⁰ Nor Aflah, Op.Cit, p.138

business development era is precisely very important role in improving the welfare of the *mustahiq*. Various business activities through the use of the concept of indirect zakat or alms or through the skim of productive zakat are useful for *mustahiq* welfare.

2.3 The Construction of Law of Institutions the Management of Zakat through Social Functions Islamic Banking Base on Ta'awun and Social Enterprise

The fundamental issue of the challenge of the development of zakat management law through the bank is because, zakat is a social-religious entity based on based non-profit. This principle is certainly at odds with the concept of Islamic banking institutions which are still prioritizing business and profit in its operation system. The concept of banking (including Islamic banking) which prioritizes the business and the net-profit is unavoidable because the banking is an institution with incorporated company (Limited Liability Company).

If it is associated with the social function of Islamic banking as *bait al-mal* institution in managing social funds such as zakat, then there is a contradiction between the concept of social banking concept that puts the function of the principle of non-business and non-profit with the concept of banking as the company as a pure business entity. To overcome this problem, the theory of Sharia enterprise is very relevant to resolve differences in the theoretical bases and orientation of each model legal forms of companies including Islamic banking.

Based on the language meaning, enterprise means the company, firm, private company, enterprise, and business start-up activities.²¹ Entrepreneurs are the people who work to produce, trade and or lease of goods or services on a regular basis with the purpose of obtaining a profit.²² Stemming from that understanding, thus the enterprise is a term that indicates or internalizes the principles in conducting business enterprise for profit.

According Harahap,²³ covers all aspects of the theory of social enterprise and accountability aspects of the company. Theory of enterprise as the development of management theories is a theory of second generation born as a form of resistance to the entity theory which is full with the values of capitalism and masculinism.²⁴

Enterprise theory that emphasizes the social aspects and responsibilities within an organizational entity and the company would be more humane theoretical concepts in constructing and guarding the flow of wealth and capital. This enterprise theory is the theory which is modified by M. Slamet to internalize Islamic values to develop theories in economics.²⁵

Further, enterprise theory then up dated by Iwan Triyuwono. The development of the theories of enterprise and entity conducted by Iwan Triyuwono provides a new perspective in economics, that so far, during the implementation and orientation of an organization or company, the system has made

²¹ John M.Echols and Hassan Shadily, *An-English-Indonesian Dictionary* (Jakarta: PT. Gramedia Pustaka Utama, 2003),p.215.

²² Sigit Winarno and Sujana Ismaya, *Accounting Dictionary*, (Bandung: CV.Pustaka Grafika, 2010), p.124.

²³ Summarized from the opinion of Sofyan Safri Harahap in buku *Akutansi Islam*. Sofyan Safri Harahap, *Akutansi Islam*, (Jakarta: Bumi Aksara, 1997), pp. 154-155.

²⁴ Entity theory etymologically means something that actually exists, unity is born. The main idea of the theory of the entity, as cited by Triyuwono is to understand the company as a separate entity from its owners. Entity theory largely ideological bases contain the same proprietary theory. Bases of the ideology is the first, though not the entity theory expresses itself as absolute ownership concept , but an outline of this theory proprietary advanced the theory that espouses the spirit of acquisition and accumulation of wealth without limits. Self-expression that should be run in a balanced rights and obligations are not used anymore. So that 's a business entity that now has the power to gain orientation and unlimited wealth. Second, the absolute right of ownership is not in power to realize the wealth, but the release of the power of human ethics. Third, the concept of entity standpoint of rationality is always based on the orientation of wealth legitimized by the normative-ethical. Iwan Triyuwono, *Islamic Accounting: Perspective, Methodology and Theory*, (London: King Grafindo Persada, 2012), p. 331 and 350.

²⁵ M. Slamet, *Enterprise Theory dalam Konstruksi Akutansi Syariah: (Studi Teoritis Pada Konsep Akutansi Syariah)*, (Malang: Universitas Brawijaya, 2001), p. 330.

the dividing wall between science, including economics, employment and religious values. So the companies are still making capitalism as pure economic ideology. To melt the wall, Iwan Triyuwono formulate a more transformative enterprise theory based on Islamic values better known as the theory of enterprise sharia (abbreviated SET).

SET is built in two phases. First, the concept of metaphor SET formulated with the mandate. The concept of mandate metaphor is then generated to be organization reality being metaphor with zakat and is abbreviated with the concept of zakat metaphor. Based on the conceptual framework, the company is no longer a profit-oriented but zakat-oriented which view property as a form of mandate from Allah. The consequences of this concept, is that the management company will manage the trust management model.²⁶ Second, zakat metaphor as the embodiment of the principles of trust is a unitary system of seeing, understanding and developing business and social organizations in order to find a more humane form of organization, emancipatory, transcendental and teleological.²⁷

Through the metaphore of the concept of zakat, the reality of organization based on profit-oriented is no longer becomes proper orientation for companies such as Islamic banking. It is through this concept, the orientation of the company is based on the alms (zakat) that positioned the company will strive to achieve the success which has the concern in distributing the welfare and implementing Islamic values in the operation of the company. Through the values contained in the metaphor of zakat, the enterprise theory "is being oneness of God" to be theory of sharia enterprise where its concept is much broader, balanced and fair.

According to researchers, the basis of the function of Islamic banking has a special character although based on incorporated company. The special character is putting the social function of Islamic banking as a principal function of an intermediary institution of banking. The transformation of social function of the Islamic banking becomes the primary function of Islamic banking Islamic banking which is inspired by importance of zakat (collecting-empowering the zakat) in realizing the concept of *maqasid al-shariah* in the field of modern accountable, and neat *alms* (zakat).

The function of Islamic banking intermediation in the field of accumulation, distribution and utilization of zakat further strengthens the specificity of the legal entity of the Islamic banking into social enterprise legal entity. The transformation of the company legal profit-based business to a social enterprise legal person is called by the researchers as the theory of social enterprise. Through the social enterprise theory, Islamic banking intermediary shall perform two functions, namely as intermediary fund-profit business and as a social intermediary institutions such as alms (zakat) fund being called social financial intermediation.

The special character of Islamic banking's role as intermediary social fund is what will be the social foundation of the birth of the company in managing social funds such as religious alms called bank of zakat. Bank of zakat is based companies that carry out social enterprise fund religious social intermediation (social financial intermediation) that carry out the function of the collection, distribution of alms from the *muzakki* to *mustahiq* and empower it to improve the life of *mustahiq* to be *muzakki*.

According to the concept of *maqasid al-sharia* the purpose of worship including the legislation of the alms (zakat) is of fundamental importance in understanding the nature of true worship. Objective of zakat is divided into three dimensions, namely the spiritual dimensions of the individual, social, and economic.²⁸

First, zakat as an obligation in a personal spiritual dimension is a manifestation of faith in God as well as an instrument of purification of the soul of all spiritual diseases, such as curmudgeonly (stingy) and inattentive to others. Zakat will develop work ethic and trying to correct, which is oriented towards the fulfillment of a lawful sustenance.²⁹ Zakat as a form of adherence to Islamic teachings

²⁶ Iwan Triyuwono, Op.Cit., P. 349.

²⁷ Iwan Triyuwono, Op.Cit., P. 350.

²⁸ Abu Mujahidah al Ghifari, tiga Dimensi Zakat, dalam <http://www.abumujahidah.blog.spot.com/2012/10/tiga-dimensi-zakat.Kolom> Tsaqofi, Rubrik Iqtishadiyah Republika 29 Juli 2010.

²⁹ The prophet asserted that Allah will not accept the zakat and other charity from the illegitimate sources.

(spiritual) is an affirmation of Muslim creed consequences to his Lord. Therefore, zakat becomes one of the means of vertical worship that can take a person to be pious and faithful man.

Secondly, zakat as a social dimension oriented to the effort to create harmonization of the social condition. Solidarity and brotherhood will grow well, love each other and gave birth to the feeling of loving one another like at the same boat. Zakat can realize the security and social peace in the midst of society, thus reducing the potential for conflict. It is stated in the Qur'an *Al-Taubah* verse 71.³⁰ The basic purpose of zakat as a form of social piety makes Islam as the balanced religion in arranging individual interests and social interests.

Zakat as a social instrument, reflected in the texts of Islamic law which states the obligation of zakat for 27 times, and after the command of praying.³¹ The substance of the alms (zakat) functions were also mentioned by the word "charity" that is mentioned 82 times in the Qur'an.³² Apart from the mention of the word zakat and *sadaqah*, the importance of zakat can be seen from the penalty of the tithe. Yusuf Qardhawi, said that the alms (zakat) has a very severe sanctions, among other penalties even to the impoverishment of the death penalty. Another punishment in Islam is the drums of war to those who do not pay the alms.³³

This suggests that the implementation of zakat or alms in a position as important as the social nature of continued worship after conducting prayers. If prayer is a testament to the execution of individual piety, zakat is proof of a Muslim social piety. Implementation of prayer as evidence of individual piety seems still to be tested with the implementation of zakat as a form of social piety.

Third, zakat as the economic dimension is reflected in the two main concepts, namely economic growth and equitable sharing mechanism in the economy. The importance of zakat in a fair economic improvement is contained in *Al-Rum* verse 39,³⁴ and *Al-Dzariyat* verse 19. Zakat as an economic entity, reflected axiological in legal standing social and alms (zakat) functions.

The presence of Islamic banking as Islamic economic institution is the gateway to the transformation of the economic values of Islam such as Zakah. The transformation of the values and principles of Islamic economy through the implementation of zakat as pillars of Islam, is expected to expand the application of Islamic economic system at the national level, not only within the scope of the dual banking system, but is able to act as an economic locomotive in Indonesia in the form of dual economic system. Therefore, to achieve these goals, the Islamic banking through intermediary social function or functions in the management of zakat, it is time to create a vision and political legislation of *maqasid* which is oriented to zakat, which is currently not optimally managed, either through BAZNAS, institutions of zakat collector and through other Islamic banking institutions.

In order to legitimize the importance of zakat, Islamic law concretely defines the legal position of zakat as one of the pillars of Islam to a person to be a muslim. Zakat as a pillar of Islam becomes ritual-based social transcendence determination that must be implemented by every Muslim.

In general, many Indonesian muslims directly give their zakat to *mustahiq*, because people feel more confident that the zakat issued have been received by those who deserve it. In addition, people have the lack confidence to distribute their zakat through Zakat Institutions business, because the management is not conducted in transparent, integrated and accountable systems. The benefit of zakat which is conducted by the Institute of zakat has not much been felt by society, even the case happens is

³⁰ QS. *Al-Tawbah* verse 71 which means: "And the believers, men and women, most of them became a helper for others. They sent goodness, preventing it from being evil, establish prayer, give alms, and they obey Allah and His Messenger. They will be given the grace by God: verily Allah is the all Mighty, the Wise.

³¹ Didin Hafidhudin, *Zakat in Modern Economy*, (Jakarta: Gema Insani, 2002), p.1.

³² Yusuf Qardhawi, *Zakat Law: Comparative Study on the Status and Philosophy Zakat Based on the Quran and Hadith*, (Bogor: Pustaka Litera AntarNusa, 2007), p.39.

³³ Ibid.pp.80-83.

³⁴ QS. *Al-Rum* verse 39 which means: "And something you give as usury that increases in human wealth, it does not add to the usury with Allah SWT. And what do you give the alms that you intend to achieve the pleasure of Allah, then that is, the people who double the reward ". See also QS. *Al-Dzariyat* verse 19 which means: "And in their wealth there is the right of the poor people and poor people who do not get a portion."

the deviation in the management of zakat. Public distrust to zakat Management Institute has led to ineffective management of zakat, therefore, the benefit of zakat as a potency of Muslims have not been able to be felt to improve the welfare of the people.

Participation of the people can be realized with the implementation of Zakat which is a religious obligation and also has a social function. The potency of zakat is not optimally managed, such as the lack of awareness of the people in carrying out the alms (zakat). Institutional management of zakat through Islamic banking function which is called with the concept of zakat bank has realized the benefit or benefit in ensuring the flow of circulation of the alms (zakat) from the *muzakki* group to *mustahiq* group, as well as improves the effect and efficiency of zakat management, in order to improve the welfare and poverty alleviation.

The importance of guaranteeing the basic needs of the *mustahiq* through organized system of Zakat. Bank will be able to realize the purpose of zakat (*maqasid al-zakat*) to perform the function of protection of the religion (*hifdzu al-din*), that of the soul (*hifdzu al-nafs*) and that of the wealth (*hifdzu al-mal*).

The role and importance of the position of the alms (zakat) as a right of the *mustahiq* plays the function of zakat in ensuring the basic needs (necessities) of the *mustahiq* such as clothing, food and shelter. Zakat as an economic instrument to support the needs (*hajiyyat*) also urged a target of its own that must be met through the alms (zakat). The main principle in the economic functions contained in the wisdom of zakat, not only serves economic function but also form spiritual ethic in social life both for the *muzakki* and the *mustahiq*.

In order to realize the above, *maqasid al-shariah* as the main base building theories and concepts that change the paradigm of Islamic banking orientation function as an intermediary institution as a religious social funds and social institutions (social enterprise), the concept of Islamic banking functions will be able to realize the bank of zakat and realize the ultimate goal is to reach the *falah* or (luck). *Falah* is a measurable benefit to the preservation of religious zakat both for the *muzakki* and *mustahiq* such as the guarantee of their religion, souls, property and social life, in this world and in the hereafter.

Furthermore, zakat as the economic pillar of the nation of Indonesia based on Pancasila and the 1945 Constitution would require the rules to reflect the regulation of justice, rule of law, and expediency. The setting of the institutional management of zakat in Indonesia has not reflected the three goals of the law yet. Various attempts to administer zakat which is reliable, accountable, and modern and tidy by the values of economic justice have been done. The result of the effort is the establishment of a social financial intermediary principle based on *ta'awun* (The principle of helping each other) which the political philosophy in building norms and rules of the law of zakat management institutions through the Bank of Zakat.

The discovery of the principle of social financial intermediary that depart from a principle of law established by norms, rules and the Articles can be effective if it has a power forced on legal subjects. The function of the collector and distributor of public funds for Islamic banking entities should be directed to the object of funds collected that is compulsory and must be distributed as alms. Bank regulations on the formation of zakat which is based on religious norms should make the Bank of zakat; function as the force in collecting zakat and receiving and distributing funds from the *muzakki* to *mustahiq*.

The change the settings that are built based on the principles of social financial intermediary makes the Bank of Zakat has the role in the integrated management system that ensures the sharia enterprise have to managing the assets and funds of zakat. Certainty of social enterprise is positioning the Bank of Zakat as a trusted and trustworthy institution in managing assets and funding sources of socio-religious Muslims, especially charity. Protection of property and zakat (*hifdzu al-mal*) in *maqasid al-shariah* principles will ensure the flow of wealth and zakat or alms fund of *muzakki* to *mustahiq*. Based on the assurance of the Zakat, the implementation of zakat as a legal instrument of

poverty alleviation and threatens the right to life (*hifdzu al-nafs*) and rights (nature) humans will be realized.

Ontology of zakat as mentioned above is realized by the epistemological framework through organized zakat management. According to researchers, an effort that underlies the epistemology of the organized zakat management is to explore, expand and define the meaning contained in the professionalism and credibility of the zakat collector. Amil zakat (zakat collector) as human resources in charged with managing alms are the collectors who have honesty, trust and understanding of the alms (zakat) and its function. Besides amil zakat, the importance of the excavation, expansion and formulation of the meaning contained in the Baitul Mal accountability system must be transformed in the modern system of zakat management institutions that applies the principles of good corporate governance. Amil Zakat and the transformation of the concept of Baitul Mal above is built through an epistemology framework that zakat should be collected and distributed from *muzakki* to *mustahiq* based social fund intermediation contract without any compensation in the form of compensation. The obligation of zakat fund raising and distributing funds from the *muzakki* to *mustahiq* is not based on lending agreement and so forth, as banking in general. The concept of zakat management framework is called the principle of social epistemology financial intermediary, which states that the bank is an intermediary institution to serve as a religious social fund being legitimized by Islamic law (such as zakat, infaq and sadaqah).

3. Conclusion

The construction of law Institutional the management of zakat through the function of Islamic banking in Indonesia has not realized the justice of economy for those who deserve to receive zakat and for social welfare. It is affected by the forms of law of Islamic banking as a company that has been prioritizing profit and business orientation alone.

In order to realize the concept of zakat management institutions justly, it is time for Zakat management to ensure the maintenance of religious alms (either *muzakki* or *mustahiq*), the one who is deserved to receive it, to ensure the safety of the lives of the *mustahiq* and to ensure the safety of the property of *muzakki* to *mustahiq*. Zakat management institutions that can guarantee the implementation of the principles of *maqasid al-sharia* are through the paradigm shift and the change in the concept of the function of Islamic banking radically.

The transformation of Islamic banking paradigm as intermediary institution in collecting, distributing and utilizing social religious funds such as zakat is based on the two concepts, namely the concept of fundamental change in the orientation of the business of the profit-based enterprise into social enterprise or called social enterprise theory, and the concept of the change of intermediary business profits funds into a social fund intermediary religious alms called ta'awun theory. The theory of social enterprise is a legal form of organization or company that only running intermediation principle and function of social funds that is oriented toward social benefits, not profit oriented business. The theory of ta'awun is the principal function of social enterprise in running the collection, distribution and utilization of social fund religious (zakat etc.) of *muzakki* to *mustahiq* based on compansation (donation) of *aqad*, not based on loan.

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